

institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of any other insured depository institution at the time of the transaction.

(d) *An eligible insured depository institution:*

(1) Means an insured depository institution that:

(i) Was in existence on December 31, 1996, and paid a deposit insurance assessment before December 31, 1996; or

(ii) Is a successor to an insured depository institution referred to in paragraph (d)(1)(i) of this section; and

(2) does not include an institution if its insured status has terminated as of or after the effective date of this regulation.

(e) *Merger* means any transaction in which an insured depository institution merges or consolidates with any other insured depository institution. Notwithstanding part 303, subpart D, for purposes of this subpart B and subpart C of this part, *merger* does not include transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution, but there is not a legal merger or consolidation of the two insured depository institutions.

(f) *Resulting institution* refers to the acquiring, assuming, or resulting institution in a merger.

(g) *Successor* means a resulting institution or an insured depository institution that acquired part of another insured depository institution's 1996 assessment base ratio under paragraph 327.33(c) of this subpart under the *de facto* rule.

§ 327.32 Determination of aggregate credit amount.

The aggregate amount of the one-time credit shall equal \$4,707,580,238.19.

§ 327.33 Determination of eligible institution's credit amount.

(a) Subject to paragraph (c) of this section, allocation of the one-time credit shall be based on each eligible insured depository institution's 1996 assessment base ratio.

(b) Subject to paragraph (c) of this section, an eligible insured depository

institution's 1996 assessment base ratio shall consist of:

(1) Its assessment base as of December 31, 1996 (adjusted as appropriate to reflect the assessment base of December 31, 1996, of all institutions for which it is the successor), as the numerator; and

(2) The combined aggregate assessment bases of all eligible insured depository institutions, including any successor institutions, as of December 31, 1996, as the denominator.

(c) If an insured depository institution is a successor to an eligible insured depository institution under the *de facto* rule, as defined in paragraph 327.31(c) of this subpart, the successor and the eligible insured depository institution will divide the eligible insured depository institution's 1996 assessment base ratio pro rata, based on the deposit liabilities assumed in the transaction. In any subsequent transaction involving an insured depository institution that previously engaged in a transaction to which the *de facto* rule applied, the insured depository institution may not be deemed to have transferred more than its remaining 1996 assessment base ratio. If the transferring institution is no longer an insured depository institution after the transfer, the last successor will acquire the transferring institution's remaining 1996 assessment base ratio.

§ 327.34 Transferability of credits.

(a) Any remaining amount of the one-time assessment credit and the associated 1996 assessment base ratio shall transfer to a successor of an eligible insured depository institution.

(b) Prior to the final determination of its 1996 assessment base and one-time assessment credit amount by the FDIC, an eligible insured depository institution may enter into an agreement to transfer any portion of such institution's one-time credit amount and 1996 assessment base ratio to another insured depository institution. The parties to the agreement shall notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative